

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SING CHO NG,)
Plaintiff,) Case No. C08-1160-JCC
)

v.)
HAGGEN, INC., et al.,) ORDER DISMISSING ACTION
Defendants.)

This matter comes before the Court on the Report and Recommendation (“R&R”) (Dkt. No. 35) of Brian A. Tsuchida, United States Magistrate Judge and Plaintiff’s Objections thereto (Dkt. No. 38).

On September 5, 2008, Plaintiff filed his complaint. (Dkt. No. 7.) Accordingly, under Federal Rule of Civil Procedure 4(m), Plaintiff had until January 5, 2009, to serve his complaint upon defendants. On January 5, 2009, the day service was due, Plaintiff sought an extension of time to complete service. (Dkt. No. 26.) Judge Tsuchida found that Plaintiff had not shown good cause for his failure to timely serve and denied his motion for an extension. (Dkt. No. 28 at 3.) However, the Court declined to dismiss the complaint at that time, explaining:

In light of the fact that plaintiff filed his motion for extension of time within the time period for effecting service, the court declines to dismiss his case and instead directs plaintiff to **effect service on defendants within 15 days from the date of this order, by January 23, 2009**. Plaintiff is further directed to show proof of service by filing with this Court an affidavit of service. **Plaintiff is advised that if he fails to complete service by the above date, this action will be subject to dismissal without prejudice.**

1 (Dkt. No. 28 at 3 (emphasis in original).) Plaintiff failed to comply with the Court’s clear directive
2 to effect service by January 23, 2009. Instead, on January 13, 2009, Plaintiff filed another motion
3 for an extension of time to complete service. (Dkt. No. 29.)

4 In the R&R, Judge Tsuchida again found that Plaintiff had not shown good cause for his
5 failure to serve and failure to comply with the Court’s direction. (R&R 3 (Dkt. No. 35).)

6 Accordingly, Judge Tsuchida recommends that the Court dismiss Plaintiff’s complaint without
7 prejudice for his failure to timely serve pursuant to Federal Rule of Civil Procedure 4(m). (*Id.*) In
8 recommending dismissal, Judge Tsuchida noted that if Plaintiff completed service by February 17,
9 2009, “he *may* submit an affidavit of service with his objections to the Report and
10 Recommendation, if any.” (*Id.* (emphasis added).) On February 17, 2009, Plaintiff filed a 795-
11 page amended complaint (Dkt. No. 37), objections to the R&R (Dkt. No. 35) and an affidavit of
12 service upon Defendant Haggen, Inc. (Dkt. No. 40). In his objections, Plaintiff asks that the Court
13 accept this untimely service because of his *pro se* status and his difficulty with the English
14 language. (Objections (Dkt. No. 35 at 2—3).)

15 The Court finds that Plaintiff has, once again, not shown good cause for his repeated
16 failure to timely serve and his failure to comply with the Court’s clear direction. Judge Tsuchida
17 has already twice found that Plaintiff’s requests for extension of time were not supported by good
18 cause. Nevertheless, Plaintiff was given an additional eighteen days, until January 23, 2009, in
19 which to effect service. In so doing, Judge Tsuchida explicitly advised Plaintiff that if he failed to
20 serve by January 23, 2009, “**this action will be subject to dismissal without prejudice.**” (Dkt.
21 No. 28 at 3 (emphasis in original).) Although the R&R indicates that Plaintiff “may” submit an
22 affidavit of service with any objections, the R&R did not grant Plaintiff an extension of time in
23 which to serve. Plaintiff has therefore failed to timely serve by January 23, 2009. Plaintiff’s
reliance on his *pro se* status and purported difficulty with English do not provide sufficient good

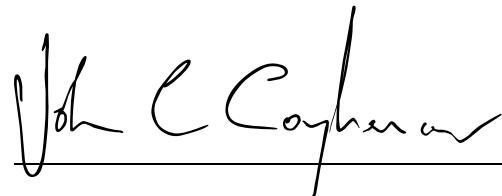
1 cause to excuse his repeated failure to timely serve and failure to follow the Court's direction.¹

2 Accordingly, because Plaintiff has failed to effect service by January 23, 2009, as directed
3 by the Court, and because he has not shown good cause for such failure, the Court does hereby
4 find and ORDER:

- 5 (1) The Court adopts the Report and Recommendation;
- 6 (2) Plaintiff's Renewed Motion to Request Extension of Time to Complete Service
7 (Dkt. 29) is DENIED;
- 8 (3) The complaint and this action are DISMISSED without prejudice for failure to
9 serve;
- 10 (4) Plaintiff's Renewed Motion to Request Reconsideration of Request for Court-
11 Appointed Attorney (Dkt. 31), and Motion for Filing Additional Pages & Request
12 for Expedite[d] Ruling (Dkt. 32) are DENIED as moot.
- 13 (5) Plaintiff's remaining motions (Dkt. Nos. 36, 38, 47, 52, & 55) are DENIED as
14 moot.
- 15 (6) The Clerk is directed to send copies of this Order to Plaintiff and to Judge
16 Tsuchida.

17 DATED this 2nd day of April, 2009.

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JOHN C. COUGHENOUR
United States District Judge

¹ In light of Plaintiff's voluminous and numerous filings (see Dkt. Nos. 17—18, 22, 24—26, 29, 31—32, 36—42, 47, 52, & 55—56), the Court is not convinced that his unfamiliarity with the English language actually presents a barrier to complying with service deadlines and the Court's directives.